IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5451 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

==========

INDIRABEN MAHENDRABHAI TRIVEDI - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR SATYEN B RAWAL for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
MR AJ YAGNIK for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/07/2007

ORAL JUDGMENT

1. By way of this Criminal Misc. Application under Section 482 of the Criminal Procedure Code, the

petitioner – original Accused No. 1 has prayed to quash and set aside the proceedings of M.Case No. 1 of 1999 pending in the Court of learned Chief Judicial Magistrate, Surendranagar.

2. The facts leading to the present application in nutshell are : That the respondent No.2 herein – original complainant has filed complaint in question against the petitioner for the offences punishable under Section 406, 420 and 468 of the Indian Penal Code alleging *inter-alia* that he has purchased house in question i.e. House No. M/96, Sangam Society from the petitioner and subsequently, she has sold the said property to somebody else. However, prior thereto there was an agreement to sale dated 01.09.1986 in favour of one Dineshbhai which was not pointed out and inspite of the aforesaid agreement to sale dated 01.09.1986 in favour of one Dineshbhai, the property in question was sold to the original complainant in the month of August, 1988. It is alleged that the petitioner has committed offence punishable under Sections 406, 420 read with Section 468 of the Indian Penal Code. Therefore, the petitioner – original accused No.1 has preferred the

present application under Section 482 of the Criminal Procedure Code.

3. It is not in dispute that said Dineshbhai Sunderlal Patadia, has filed Special Civil Suit No. 122 of 1988 in the Court of 2nd Joint Civil Judge Senior Division, Surendranagar for specific performance of agreement to sale dated 01.09.1986 in which original complainant was also a party to the said proceedings being Defendant No.2 and when transaction has taken place between respondent No.2 – original complainant and the original owner in the year 1988, he was aware of the fact that there exists agreement to sale dated 01.09.1986 in favour of one Dineshbhai. It is also required to be noted that respondent No.2 as defendant No.2 did not contest the aforesaid suit and ultimately decree came to be passed by the learned trial Court by judgment and decree dated 28.02.1995. It is also required to be noted and it has come on record that being aggrieved and dissatisfied with the judgment and order passed by the learned trial Court dated 28.02.1995 passed in Special Civil Suit No. 122 of 1988, First Appeal was preferred before the Division Bench of this Court.

The Division Bench of this Court dismissed the said First Appeal by judgment and order dated 5th April, 1995 by observing that respondent No.2 original complainant was aware of the transaction / agreement to sale dated 01.09.1986 and that he cannot be said *bona-fide* purchaser without notice. In view of the above when respondent No.2 - original complainant was aware of the agreement to sale dated 01.09.1986 and inspite of that he has purchased the said property, it cannot be said that he was cheated by the original owner.

4. Under the circumstances no case is made out against the petitioner for the offences punishable under Sections 406, 420 and 468 of the Indian Penal Code in the facts and circumstances of the case and considering the decision of the trial Court as well as Division Bench of this Court. Hence, impugned complaint is nothing but abuse of process of law, which requires to be quashed and set aside in exercise of powers under Section 482 of the Criminal Procedure Code.

5. For the reasons stated above, the impugned

complaint being M.Case No. 1 of 1999 pending in the Court of learned Chief Judicial Magistrate, Surendranagar is hereby quashed and set aside. Rule is made absolute to the aforesaid extent.

[M.R.Shah, J.]

satish